IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

CRL.A.No. 616 of 2007()

ST.615/2006 ON THE FILE OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, THIRUVANANTHAPURAM.

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APPELLANT: COMPLAINANT

A.MUJEEB, S/O ABDUL KARIM,
SABEENA MANZIL, PANGAPPARA P.O,
GANDHI NAGAR-61, THIRUVANANTHAPURAM.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENTS: STATE & ACCUSED
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1. STATE OF KERALA, REPRESENTED BY THE
DIRECTOR OF PUBLIC PROSECUTIONS,
HIGH COURT OF KERALA, ERNAKULAM.

2. JIFRY JALEEL, S/O P.M.JALEEL,
JAGATHY PEOPLES LANE, THAICAUD P.O.,
JPN-30, THIRUVANANTHAPURAM.

BY P.P.SRI.C.M.KAMMAPPU FOR R1

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl. A. No. 616 of 2007

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Dated this the 25th day of July, 2007

JUDGMENT

When an application for early hearing of the appeal came up for orders, this Court heard the appeal itself and disposed of the same.

2. By the impugned order the 2nd respondent was acquitted by the trial court under section 256(1) Code of Criminal Procedure. The learned counsel for the appellant submits that the trial court had not complied with the provisions of Code of Criminal Procedure while passing the impugned order. The learned counsel for the appellant also submits that the order under challenge is not in accordance with the principles laid down by this Court in decisions reported in Don Bosco V. Partech Computers Ltd. (2005 (2) KLT 1003), G.F.S. Chits & Loans (P) Ltd. V. Rajesh (2006(3) KLT 825) and a decision of the Apex Court reported in Associated Cements Co. Ltd. V. Keshwanand (1998(1) KLT 179 (S.C.).

3. A reading of the impugned order would show that the trial court acquitted the 2nd respondent for the reason that in spite of specific direction, the appellant absent. As per the principles laid down in Don

Bosco V. Partech Computers Ltd. (Supra), when the presence of the complainant was quite unnecessary and the Magistrate could proceed with the case by adjourning the same even if there was no representation from the counsel, the Magistrate should have adjourned the case, particularly when steps under section 82 and 83 of the Cr.P.C. were pending against the accused. In G.F.S.Chits & Loans (P) Ltd. V. Rajesh (Supra) this Court held that the courts should also bear-in-mind that unmerited, thoughtless disposal gives wrong signal to the society, staking even public confidence in the system of administration of justice. In paragraph 17 of 1998(1) KLT 179 (Supra) the Apex Court held as follows:-

> "17. Reading the section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may

> not be a proper exercise of the power envisaged in the section. The discretion must therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice."

A reading of the impugned order would not show that the personal attendance of the appellant is essential on that day.

4. In the above circumstances, this Court is of the view that the order under challenge is liable to be set aside and the matter has to be remitted to the trial court for fresh consideration. Ordered accordingly. The trial court is directed to consider the matter afresh from the stage at which the order impugned order has been passed.

The appeal is allowed as above.

The parties shall appear before the court below on 7-9-2007

The records of the case shall be forwarded to the trial court forthwith.

K. Thankappan,
Judge.

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It is relelvant to note that only because of the absence of the appellant, the 1st rspondent is dragged to this Court. Hence, it is only proper for this Court to allow a reasonable costs to the 1st respondent. Therefore, the appellant is directed to deposit before the court below an amount of Rs.2,000/- on or before the date of posting of the case. If the amount is deposited, the 1st respondent is permitted to withdraw the same.

K. Thankappan,J.

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Crl.A.349/2003

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Judgment
29-3-2007